IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.220 OF 2000

Mrs.Smita Manohar Vaidya. .... Appellant.

Versus.

Mrs.Prabha O,Tambe & ors. ..... Respondents.

Shri Y.M.Chaudhari for the Appellant.

Shri M.R.Katikar for the Respondents, Nos.1, 2 & 4.

CORAM : ABHAY S. OKA, J.

DATED : 10th January, 2005.

P.C.:

1. The Appellant/Plaintiff has taken exception to the Judgment and Order dated 1st March 2000 passed by the learned trial Judge by which the application for temporary injunction at Exh.5 was rejected. The suit is filed by the Plaintiff/Appellant for partition, declaration, and other reliefs. The prayer made by the Appellant/Plaintiff in the application for temporary injunction at Exh.5 was for restraining the Respondents/Defendants from implementing the Will and from making any transaction in respect of the properties subject matter of the Will.

2. On 29rh March 2000 the Appeal was admitted by this

Court. On Civil Application No.272 of 2000, on the same day, the learned Single Judge of this Court passed the following order:

> "Rule. Returnable in four weeks. The learned Counsel for the Respondent No.1 states that the Respondent No.1 shall not alienate, transfer or create third party interest in the property, which is mentioned in paragraph 26 of the plaint. Statement accepted. In view of this statement no ad-interim order is necessary."

3. In view of the statement fairly made by the learned Counsel appearing for the Respondent No.1, a restraint was operating against the Respondent No.1 from creating any third party interests in respect of the property which is mentioned in paragraph 26 of the plaint. Shri Chaudhary, learned Counsel appearing for the Appellant stated that the final hearing of the suit has already been commenced. In view of this position, by a decision on merits of the Appeal by this Court, prejudice will be caused to one of the two parties. As the restraint against the Respondent No.1 has been operating for the last more than four years, the Appeal can be disposed of by the following order:

(i) Till disposal of the suit the Respondent No.1 is restrained from creating any third party interests in respect of the property described in paragraph 26 of the plaint.

(ii) The learned trial Judge will decide the suit as expeditiously as possible and preferably on or before 30th June 2005.

(iii) It is made clear that the learned trial Judge will decide the suit uninfluenced by the grant of relief by this Court and the suit will be decided on its own merits.

(iv) There will be no order as to costs.

(v) Parties and the concerned Court to act on authenticated copy of this order.

Judge.